Jennifer A. Miller, Esq. (CA Bar No. 320823)
jamiller@beneschlaw.com
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
One Montgomery Tower, Suite 2700
San Francisco, CA 94104
Tel: (628) 600-2241

Attorney for Petitioners Flextronics Manufacturing Juarez, S. de R.L. de C.V. d/b/a Flextronics de Mexico, Flex, Ltd., d/b/a Flextronics de Mexico, Flextronics International Europe B.V., and Flextronics Industrial, Ltd.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FLEXTRONICS MANUFACTURING JUAREZ, S. DE R.L. DE C.V. *d/b/a* "FLEXTRONICS DE MEXICO," FLEX, LTD. *d/b/a* "FLEXTRONICS DE MEXICO," FLEXTRONICS INTERNATIONAL EUROPE B.V., AND FLEXTRONICS INDUSTRIAL, LTD, Applicants, v. UBE, INC. *d/b/a* PLUM, INC., Respondent.	Case No. _____ **PETITION TO CONFIRM ARBITRATION AWARD**

Pursuant to 9 U.S.C. §§ 6 and 9 of the Federal Arbitration Act ("FAA"), Applicants Flextronics Manufacturing Juarez, S. de R.L. de C.V. *d/b/a* "Flextronics de Mexico," Flex, Ltd. *d/b/a* "Flextronics de Mexico," Flextronics International Europe B.V., and Flextronics Industrial, Ltd. (collectively, "Flex") move this Court for an Order confirming a written Arbitration Award dated November 18, 2019 (the "Award"), and for a Judgement in conformity therewith, entered against Respondent Ube, Inc. *d/b/a* Plum, Inc. ("Respondent") for breach of contract by JAMS, Case Reference No. 1110023929 (the "Arbitration"). In support of this Application, Flex states as follows:

INTRODUCTION

1.   On February 11, 2016, Flex and Respondent entered into a Short Form Manufacturing Services Agreement (the "Agreement") for the manufacture of certain products for Respondent.

2.   On February 20, 2019 and pursuant to the terms of the Agreement, Flex commenced the Arbitration against Respondent before JAMS after a dispute arose concerning the payment of six (6) invoices by Respondent.

3.   On November 18, 2019, the Arbitrator issued the Award against Respondent and in favor of Flex following an evidentiary hearing. Flex now seeks to reduce the Award to judgment.

THE PARTIES

4.   Flex, Ltd., *d/b/a* "Flextronics de Mexico," is a foreign limited company with its principal place of business in Singapore and with its United States headquarters at 6201 America Center Drive, San Jose, California 95002.

5.   Flextronics Manufacturing Juarez, S. de R.L. de C.V., *d/b/a* "Flextronics de Mexico," is a foreign corporation with its principal place of business in Ciudad Juárez, Mexico. Flextronics Manufacturing Juarez, S. de R.L. de C.V. is a Flex affiliate that manufactured the Product for Respondent.

6.   Flex Industrial, Ltd. is a foreign corporation with its principal place of business in Mauritius that entered into the Agreement with Respondent.

7.   Flextronics International Europe B.V. is a foreign private limited liability company with its principal place of business in Oostrum, Limburg, Netherlands. Flextronics International Europe B.V. is a Flex affiliate that issued the subject invoices to Respondent for payment under the Agreement.

8.   Respondent is a Texas corporation with its principal place of business at 9800 N. Lamar Boulevard, Austin, Texas 78753. Respondent does business under the trade name Plum, Inc.

JURISDICTION AND VENUE

9.   The Court has subject-matter jurisdiction over this Application pursuant to 28 U.S.C. § 1332, because the underlying dispute involves parties between whom there is complete diversity and an amount in controversy exceeding $75,000 (as shown by the Award). *See Vaden v. Discover Bank*, 556 U.S. 49 (2009). The Application is authorized by 9 U.S.C. § 9 of the FAA.

10.   Pursuant to 9 U.S.C. § 9, Venue is proper in this Court as "the United States court in and for the district within which [the] [A]ward was made" because no court is specified in the Agreement. *See* 9 U.S.C. § 9.

COUNT ONE
(Confirmation of Arbitration Award)

11.   The Agreement contains a binding arbitration provision requiring arbitration of all disputes between the parties:

> This MSA shall be governed by and interpreted in accordance with the laws of the state of California. Any dispute, claim or controversy arising from or related in any way to this MSA or the interpretation, application, breach, termination or validity thereof, including without limitation any claim of inducement of this MSA by fraud will be submitted for resolution by binding arbitration in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS. The arbitration will be held in Santa Clara County, California and it shall be conducted in the English language. Judgment on any award in arbitration may be entered in any court of competent jurisdiction. Notwithstanding the above, each party shall have the right to file in the Santa Clara, California state court or the federal courts in and for the Northern District of California an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, and/or appointment of a receiver on the grounds that the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief. In the event of any dispute between the parties, the parties hereby knowingly and voluntarily agree that any and all matters shall be decided by a judge or arbitrator without a jury to the fullest extent permissible under applicable law.

A true and accurate copy of the Agreement is attached as **Exhibit A**. The Agreement further provides that "Judgment on any award in arbitration may be entered in any court of competent jurisdiction." (*Id.* at p. 4.)

12.   On February 20, 2019 and pursuant to the terms of the Agreement, Flex issued a Demand for Arbitration for Respondent's failure to submit payment on six (6) outstanding invoices.

13.   On May 16, 2019, the parties agreed upon William J. Elfving to serve as the arbitrator (the "Arbitrator") in the Arbitration.

14.   On November 14, 2019, an evidentiary hearing in the Arbitration was conducted in San Jose, California.

15.   On November 18, 2019, the Arbitrator issued the Award in favor of Flex and against Respondent for breach of contract in the amount of $383,843.48. A true and accurate copy of the Award is attached as **Exhibit B**.

16.   The Award is binding upon the parties (*see* Ex. A at p. 4) and has not been satisfied. *See* 9 U.S.C. § 2 (commitments to be bound by arbitration results are "valid, irrevocable, and enforceable").

17.   Flex is accordingly entitled to a judgment in the amount of $383,843.48

18.   Flex now requests confirmation of the Award by this Court pursuant to 9 U.S.C. § 9.

WHEREFORE, pursuant to 9 U.S.C. § 9, Flex respectfully requests this Court to confirm the Award in favor of Flex in the amount of $383,843.48 and enter a final judgment against Respondent accordingly.

Dated: December 20, 2019   Respectfully submitted,

**BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP**

/s/ Jennifer A. Miller
Jennifer A. Miller, Esq. (CA Bar No. 320823)
jamiller@beneschlaw.com
One Montgomery Tower, Suite 2700
San Francisco, California 94104
Tel: (628) 600-2241
Fax: (312) 767-9192

Attorneys for Applicants

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